**South Carolina General Assembly**

123rd Session, 2019-2020

**H. 3106**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Wheeler, Martin, Kirby, Taylor and Ridgeway

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Companion/Similar bill(s): 51, 4777

Introduced in the House on January 8, 2019

Currently residing in the House Committee on **Labor, Commerce and Industry**

Summary: Firefighter, presumption of certain illnesses

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

12/18/2018 House Prefiled

12/18/2018 House Referred to Committee on **Labor, Commerce and Industry**

1/8/2019 House Introduced and read first time ([House Journal‑page 88](file:///h:\hj\20190108.docx))

1/8/2019 House Referred to Committee on **Labor, Commerce and Industry** ([House Journal‑page 88](file:///h:\hj\20190108.docx))

1/9/2019 House Member(s) request name added as sponsor: Kirby

4/24/2019 House Member(s) request name added as sponsor: Taylor

3/4/2020 House Member(s) request name added as sponsor: Ridgeway

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**VERSIONS OF THIS BILL**

[12/18/2018](file:///p:\pprever\2019-20\3106_20181218.docx)

**A** **BILL**

TO AMEND SECTION 42‑1‑160, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DEFINITIONS OF “INJURY” AND “PERSONAL INJURY” IN WORKERS’ COMPENSATION, SO AS TO PROVIDE A DEFINITION OF “FIRST RESPONDER” AND TO MODIFY THE REQUIREMENTS OF SUCH AN EMPLOYEE SEEKING WORKERS’ COMPENSATION FOR PERSONAL INJURY CAUSED BY STRESS, MENTAL INJURY, OR MENTAL ILLNESS, AND TO ADD MENTAL ILLNESS TO RELATED CONDITIONS THAT MAY BE COMPENSABLE IF RESULTING FROM A SIGNIFICANT TRAUMATIC EXPERIENCE; AND TO AMEND SECTION 42‑11‑30, RELATING TO THE PRESUMPTION THAT CERTAIN DISEASES SUSTAINED BY A FIREFIGHTER ARE OCCUPATIONAL DISEASES FOR THE PURPOSES OF WORKERS’ COMPENSATION, SO AS TO PROVIDE CERTAIN ADDITIONAL MEDICAL CONDITIONS ALSO MUST BE PRESUMED TO BE OCCUPATIONAL DISEASES FOR THE PURPOSES OF WORKERS’ COMPENSATION, TO DELETE A MINIMUM AGE FOR THE APPLICABILITY OF THIS SECTION, TO DELETE A REQUIREMENT THAT ELIGIBILITY FOR THIS PRESUMPTION BE CONDITIONED UPON THE MEDICAL CONDITION HAVING DEVELOPED WHILE THE FIREFIGHTER WAS ACTIVELY ENGAGED IN FIREFIGHTING OR WITHIN TWENTY‑FOUR HOURS FROM THE LAST DATE HE ENGAGED IN FIREFIGHTING, TO PROVIDE A FIREFIGHTER WITH TEN YEARS OF SERVICE WHO SUSTAINS AN IMPAIRMENT OR INJURY CAUSED BY CANCER IS ENTITLED TO A REBUTTABLE PRESUMPTION THAT THIS IMPAIRMENT OR INJURY AROSE FROM AND IN THE COURSE OF HIS EMPLOYMENT AS A FIREFIGHTER, TO PROVIDE THIS PRESUMPTION IS CONDITIONED UPON CERTAIN MEDICAL EXAMINATIONS AND REPORTING REQUIREMENTS, AND TO PROVIDE A PERSON IS CONSIDERED TO HAVE PASSED THE REQUISITE PHYSICAL EXAMINATION IF THE FIRE DEPARTMENT FAILS TO REQUIRE OR OBTAIN THIS EXAMINATION UPON HIS ENTRY OF SERVICE.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 42‑1‑160 of the 1976 Code is amended to read:

“Section 42‑1‑160. (A) ‘Injury’ and ‘personal injury’ mean only injury by accident arising out of and in the course of employment and shall not include a disease in any form, except when it results naturally and unavoidably from the accident and except such diseases as are compensable under the provisions of Chapter 11 of this title. In construing this section, an accident arising out of and in the course of employment includes employment of an employee of a municipality outside the corporate limits of the municipality when the employment was ordered by a duly authorized employee of the municipality.

(B) Stress, mental injuries, and mental illness arising out of and in the course of employment unaccompanied by physical injury and resulting in mental illness or injury are not considered a personal injury unless the employee establishes, by a preponderance of the evidence:

(1) that the employee’s employment conditions causing the stress, mental injury, or mental illness were extraordinary and unusual in comparison to the normal conditions of the particular employment; and

(2) the medical causation between the stress, mental injury, or mental illness, and the stressful employment conditions by medical evidence.

(C) The provisions of subsection (B)(1) do not apply, however, if the employee is employed as a first responder and the impairment causing the stress, mental injury, or mental illness is medically diagnosed as Post Traumatic Stress Disorder that arises from the first responder’s direct involvement in a significanttraumatic experience or situation, without regard to whether the experience or situation was extraordinary or unusual in comparison to the normal working conditions of a first responder’s employment.

(D) Stress, mental injuries, heart attacks, strokes, embolisms, or aneurisms arising out of and in the course of employment unaccompanied by physical injury are not considered compensable if they result from any event or series of events which are incidental to normal employer/employee relations including, but not limited to, personnel actions by the employer such as disciplinary actions, work evaluations, transfers, promotions, demotions, salary reviews, or terminations, except when these actions are taken in an extraordinary and unusual manner.

(~~D~~E) Stress, mental injuries, and mental illness alleged to have been aggravated by a work‑related physical injury may not be found compensable unless the aggravation is:

(1) admitted by the employer/carrier;

(2) noted in a medical record of an authorized physician that, in the physician’s opinion, the condition is at least in part causally related or connected to the injury or accident, whether or not the physician refers the employee for treatment of the condition;

(3) found to be causally related or connected to the accident or injury after evaluation by an authorized psychologist or psychiatrist; or

(4) noted in a medical record or report of the employee’s physician as causally related or connected to the injury or accident.

(~~E~~F) In medically complex cases, an employee shall establish by medical evidence that the injury arose in the course of employment. For purposes of this subsection, ‘medically complex cases’ means sophisticated cases requiring highly scientific procedures or techniques for diagnosis or treatment excluding MRIs, CAT scans, x‑rays, or other similar diagnostic techniques.

(~~F~~G) The word ‘accident’ as used in this title must not be construed to mean a series of events in employment, of a similar or like nature, occurring regularly, continuously, or at frequent intervals in the course of such employment, over extended periods of time. Any injury or disease attributable to such causes must be compensable only if culminating in a compensable repetitive trauma injury pursuant to Section 42‑1‑172 or an occupational disease pursuant to the provisions of Chapter 11 of this title.

(~~G~~H) As used in this section, ‘medical evidence’ means expert opinion or testimony stated to a reasonable degree of medical certainty, documents, records, or other material that is offered by a licensed health care provider.

(I) As used in this section, ‘first responder’ means a law enforcement officer, firefighter, emergency medical technician, or paramedic employed by state or local government. A volunteer law enforcement officer, firefighter, emergency medical technician, or paramedic engaged by the state or local government is also considered a first responder of the state or local government for purposes of this section.”

SECTION 2. Section 42‑11‑30 of the 1976 Code is amended to read:

“Section 42‑11‑30. (A) Notwithstanding the provisions of this chapter, for purposes of the South Carolina Workers’ Compensation Law, any impairment or injury to the health of a firefighter caused by ~~heart disease or respiratory~~ disease of the heart, lungs, or respiratory tract, brain cancer, colon cancer, esophageal cancer, intestinal cancer, lung cancer, melanoma, mesothelioma, multiple myeloma, non‑melanoma skin cancer, oral cavity cancer, prostate cancer, rectal cancer, testicular cancer, Non‑Hodgkin’s lymphoma, and stomach cancer resulting in total or partial disability or death is presumed to have arisen out of and in the course of employment, unless the contrary is shown by competent evidence, if the firefighter is at the time of such impairment or injury a bona fide member of a municipal, county, state, port authority, or fire control district fire department in this State. In order to be entitled to the presumption provided for in this section, any person becoming a member of a fire department ~~after May 29, 1968, must be under the age of thirty‑seven years and~~ must have successfully passed a physical examination by a competent physician upon entering into such service ~~or by July 1, 2012~~, a written report of which must have been made and filed before any alleged injury with the fire department, which examination failed to reveal any evidence of such condition or conditions~~, and the condition or conditions developed while actively engaged in fighting a fire or within twenty‑four hours from the date of last service in the activity~~. If the fire department employer fails to require or obtain a physical examination upon entering service, the employee is considered to have successfully passed the examination.

(B)(1) Notwithstanding the provisions of this chapter, for purposes of the South Carolina Workers’ Compensation Law, a cardiac‑related incident resulting in impairment or injury to a law enforcement officer resulting in total or partial disability, or death, is presumed to have arisen out of and in the course of employment if this impairment or injury developed while actively engaged in, or within twenty‑four hours from the date of, a law enforcement incident involving unusual or extraordinary physical exertion, unless the contrary is shown by competent evidence. At the time of the incident, the law enforcement officer must be employed as a law enforcement officer of a municipal, county, state, port authority, or other law enforcement agency in this State. In order to be entitled to the presumption provided by this section, a person becoming a law enforcement officer, must be under thirty‑seven years of age and upon entering into the service, must have successfully passed a physical examination which includes a risk factor assessment for coronary artery disease conducted by a competent physician who should counsel on risk factor reduction and consider current medical literature on evaluation and prevention of coronary artery disease in conducting the risk factor assessment. A written report of the examination must have been made and filed with the law enforcement agency, which examination must not have revealed evidence of cardiac impairment or injury. If the law enforcement officer is identified as being a high risk for coronary artery disease during the risk factor assessment and the law enforcement officer fails to undergo, at his own expense, additional medical tests related to discovery of coronary artery disease, he is not entitled to the presumption provided by this section.

(2) If a law enforcement agency cannot produce the report described in ~~subitem (B)~~ item (1), the law enforcement officer may submit a written report of a physical examination conducted before July 1, 2012, which includes a risk factor assessment for coronary artery disease conducted by a competent physician who also shall counsel on risk factor reduction and consider current medical literature on evaluation and prevention of coronary artery disease in conducting the risk factor.

(C) Notwithstanding the provisions of this chapter and for the purposes of this title, a firefighter with ten years of service as a firefighter who sustains an impairment or injury caused by cancer resulting in disability or death is entitled to the presumption that this disability or death arose from and in the course of his employment as a firefighter, unless the presumption is rebutted by competent evidence. In order to be entitled to the presumption provided in this subsection, a person when becoming a member of a fire department must have successfully passed a physical examination by a licensed physician, this physician must prepare a written report of this examination and indicate in the report that the examination revealed no evidence of cancer or impairment by cancer, and this report must be filed with the fire department of which the person is a member. If a fire department employer fails to require or obtain this physical examination when the person enters service, the person is considered to have successfully passed this examination.”

SECTION 3. This act takes effect upon approval by the Governor.

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